IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1119 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

JAYSON AIR PRODUCTS PVT LTD - Petitioner(s)

Versus

EMPLOYEES PROVIDENT FUND ORGANIZATION - Respondent(s)

==========

Appearance :

MR GM JOSHI for Petitioner No(s).: 1.

MR MS RAO for Respondent No(s).: 1.

==========

CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 30/06/2005

ORAL JUDGMENT

Rule. Shri MS Rao, learned advocate waives service of Rule on behalf of the respondent. With the consent of learned advocates

appearing for the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Controlling Authority under the provisions of The Employees Provident Fund and Miscellaneous Provisions Act, 1952 [hereinafter referred to as “the Act”] under Section 7-A of the Act and also the order passed in Review Application under Section 7-B of the Act.

3. Shri GM Joshi, learned advocate appearing on behalf of the petitioner has submitted that in view of the fact that the factory was closed nobody could remain present on behalf of the petitioner; though the amount of P.F., was paid except for that period the order under Section 7-A has been passed ex-parte; therefore the petitioner had preferred a Review Application under Section 7-B of the Act along with all the necessary materials and documentary evidence; however the Controlling Authority without considering the material produced and assigning any reason only on the ground that ample opportunity was given to the petitioner by order dated 24.4.2003 has dismissed the review application; and therefore it is requested to remand the matter to the Controlling Authority for deciding the review application afresh considering the materials and documentary evidence produced along with the review application. He has submitted that pursuant to the order passed by this Court dated 3.1.2005 the petitioner has deposited an amount of Rs. 28,571 which according to the petitioner was due and payable to show his bonafides.

4. On the other hand, Shri MS Rao, learned advocate appearing on behalf of the respondent has opposed the present Special Civil Application and has submitted that the petitioner has statutory remedy available by way of appeal before the appellate authority and therefore the present Special Civil Application should not be entertained. He has further submitted that ample opportunity was given to the petitioner at the time of passing the order under Section 7-A of the Act and therefore no interference is required and therefore it is requested to dismiss the present Special Civil Application.

5. Section 7-B of the Act reads as under :

7-B. Review of orders passed under section 7-A.

(1) Any person aggrieved by an order made under sub-section (1) of section 7-A, but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order may apply for a review of that order to the officer who passed the order:
Provided that such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.
(2) Every application for review under sub-section (1) shall be filed in such form and manner and within such time as may be specified in the Scheme.
(3) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.
(4) Where the officer is of opinion that the application for review should be granted,he shall grant the same.
Provided that, ___
(a) no such application shall be granted without previous notice to all the parties before him to enable them to appear and be heard in support of the order in respect of which a review is applied for, and
(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him when the order was made, without proof of such allegation.
(5) No appeal shall lie against the order of the officer rejecting an application for review, but an appeal under this Act shall lie against an order passed under review as if the orders passed under review were the original order passed by him under section7-A.”

Any person aggrieved by an order made under sub-section (1) of Section 7-A may prefer a review application for reviewing the order apart from other grounds which are stipulated in Section 7-B on account of some mistake or error apparent on face of record or for any other sufficient reason and request the authority to review the order. The Controlling Authority is, therefore, required to consider the material placed on record along with the Review Application and thereafter is required to pass appropriate order

but straightway without considering and/or discussing the same cannot dismiss the review application solely on the ground that ample opportunity was given at the time of hearing under Section 7-A of the Act. Except the fact that ample opportunity was given to the petitioner at the time when the order under Section 7-A of the Act was passed nothing has been discussed by the authority while considering the review application and, therefore, interference of this Court at this stage is required.

6. It is true that there is a statutory alternative remedy available to the petitioner by way of appeal, but in view of the peculiar facts and circumstances which are stated hereinabove, and without treating the same as precedent, the impugned order passed in review application is required to be quashed and set aside as the Controlling Authority has not exercised the jurisdiction, which is vested in it, while considering the review application under Section 7-B of the Act. Accordingly, the present Special Civil Application is allowed. The impugned order, passed by the Controlling Authority rejecting the review application, is hereby quashed and set aside. The matter is remanded to the Controlling Authority for deciding the review application afresh in accordance with law and on merits and to pass an appropriate order after considering the material produced along with the Review Application. It is, however, made clear that this Court has not expressed any opinion on the merits of the case in favour of any of the parties, and it is for the Controlling Authority to pass an appropriate order in accordance with law and on merits considering the provisions of Section 7-B of the Act. The amount which is already deposited by the petitioner before the Regional Provident Fund Commissioner is directed to be adjusted subject to ultimate outcome of the review application. Rule is made absolute to the aforesaid extent. However, the petitioner is directed to pay/deposit an amount of Rs. 5000 towards costs at the office of Regional Provident Fund Commisisoner within the period of two weeks from today, and thereafter the Controlling Authority is directed to decide the Review Application as early as possible.

[M.R. Shah, J.]

rmr.